

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

<p>BRIAN WAYNE CHESSER,</p> <p style="text-align:center">Petitioner,</p> <p>v.</p> <p>STEVEN HARPE,</p> <p style="text-align:center">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p style="text-align:right">Case No. CIV-24-891-HE</p>
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REPORT AND RECOMMENDATION

Petitioner Brian Wayne Chesser, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. Doc. 1. United States District Judge Joe Heaton referred this matter to the undersigned Magistrate Judge in accordance with 28 U.S.C. § 636(b)(1)(B)-(C), Docs. 3-4, and the undersigned now considers Petitioner's application for leave to proceed in forma pauperis ("IFP Motion"), Doc. 6.

I. Analysis

Petitioner's IFP Motion includes a statement from the prison accountant that Petitioner had \$18.58 in his institutional accounts as of October 7, 2024, Doc. 6 at 3, though the financial documents attached to the IFP Motion show an "account balance" of \$116.27 in his institutional accounts as of that date, Doc. 6-1 at 2. Considering either balance, the Court finds that Petitioner is financially able to prepay the \$5.00 filing fee for this proceeding. Because Petitioner has not shown that he qualifies for authorization to proceed without prepayment of the filing fee, Petitioner's IFP Motion should be denied. *See Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (noting that "to

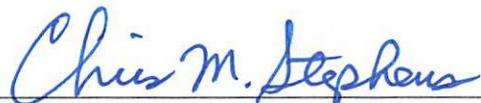
succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees"); 28 U.S.C. § 1915(a)(1).

II. Recommendation and Notice of Right to Object

For the foregoing reasons, the undersigned recommends that the Court **DENY** Petitioner's IFP Motion, Doc. 6, and dismiss this action without prejudice unless Petitioner pays the full filing fee of \$5.00 within 21 days of any order adopting this Report and Recommendation. The parties are advised of their right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objection must be filed with the Clerk of this Court by November 5, 2024. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to timely object to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed in this Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in this matter.

ENTERED this 15th day of October, 2024.


CHRIS M. STEPHENS
UNITED STATES MAGISTRATE JUDGE